

BRIEFING BOOK ON INTELLIGENCE OVERSIGHT LEGISLATION

FOR THE DIRECTOR OF CENTRAL INTELLIGENCE APPEARANCE

BEFORE THE FOREIGN AFFAIRS COMMITTEE

HOUSE OF REPRESENTATIVES

14-JUNE-1988

INDEX

DCI APPEARANCE BEFORE FOREIGN AFFAIRS COMMITTEE ON LEGISLATION
TO REVISE THE INTELLIGENCE OVERSIGHT ACT

- A. Background on Upcoming Hearing.
- B. Opening Statement.
- C. Questions and Answers.
- D. Copy of H.R. 3822, the "Intelligence Oversight Act of 1988."
- E. Copy of H.R. 3611, the "Foreign Intelligence Congressional Notification Act. (the "Broomfield" bill)
- F. Declassified National Security Decision Directive 286.
- G. Opening Statement by Mike Armacost.

A

10 June 1988

OCA 88-1872

NOTE FOR: The Director
FROM: John L. Helgerson
SUBJECT: Upcoming Testimony Before the House Foreign
Affairs Committee on Intelligence Oversight
Legislation

STAT

Attached is your briefing book in preparation for your 14 June appearance at an open House Foreign Affairs Committee hearing on the Intelligence Oversight bill. Mike Armacost is also scheduled to testify, and the Department of State has requested that he appear with you in a panel. Clark Clifford will make a separate appearance on the same day. Senator Cohen and perhaps Secretary Carlucci will testify on 16 June before the Committee. The Committee will mark up the legislation on 21 June.

This will be the third time you have appeared to testify on this type of legislation. You previously appeared before the House Intelligence Committee and the Senate Intelligence Committee.

The Foreign Affairs Committee staff has informed us that some Members are concerned that they do not receive sufficient intelligence information and covert action information. Because this is the first time you have appeared before the Committee, it is likely you will get questions on this subject even though the hearing is technically on the Oversight Legislation. In order to dispel certain misperceptions that may have led to this concern, my staff has prepared an opening statement that addresses the issue of access by the Foreign Affairs Committee to intelligence information and covert action information. The statement also, of course, addresses whether the legislation is necessary and the practical problems with the mandatory requirement to notify Congress, without exception, of a covert action within 48 hours of the President signing the Finding. We have included Q & As that cover these issues.

The Committee staff has also informed us that there is a good chance that you will receive other questions that have

absolutely nothing to do with the Intelligence Oversight Legislation, e.g., embassy security. Because some questions may come out of "left field", I suggest you attempt to defer answering those questions on the grounds that it would be inappropriate to discuss the answer in an open hearing.

There are extreme ideological differences among Members of the House Foreign Affairs Committee, and it is likely that these differences will manifest themselves during the course of the hearing. Because you may not be familiar with some of these Members, my staff has prepared short profiles of each Member of the Foreign Affairs Committee for your information.

B

STATEMENT OF THE DIRECTOR OF CENTRAL INTELLIGENCE
BEFORE THE FOREIGN AFFAIRS COMMITTEE
HOUSE OF REPRESENTATIVES

14 JUNE 1988

MR. CHAIRMAN AND MEMBERS OF THE FOREIGN AFFAIRS COMMITTEE, I AM PLEASED TO BE HERE TODAY TO SHARE SOME OF MY THOUGHTS ON H.R. 3822, THE INTELLIGENCE OVERSIGHT ACT OF 1988. SINCE THIS IS THE FIRST TIME I HAVE APPEARED BEFORE THIS COMMITTEE AS DIRECTOR OF CENTRAL INTELLIGENCE, I ALSO WANT TO TAKE THIS OPPORTUNITY TO PROVIDE YOU WITH MY VIEWS ON THE RELATIONSHIP BETWEEN THIS COMMITTEE AND THE CIA.

THE VIEWS EXPRESSED IN THIS STATEMENT ON H.R. 3822 REFLECT THE POSITION OF THE ADMINISTRATION. I DRAW YOUR ATTENTION AT THE OUTSET TO THE ADMINISTRATION POSITION, AS CONVEYED TO CONGRESS IN THE PRESIDENT'S LEGISLATIVE MESSAGE, THAT A BILL WHICH FAILS TO PRESERVE THE FLEXIBILITY AND AUTHORITY THE PRESIDENT NEEDS TO CONDUCT INTELLIGENCE ACTIVITIES EFFECTIVELY WILL NOT BE ACCEPTABLE TO THE PRESIDENT.

MR. CHAIRMAN, MY TESTIMONY TODAY WILL BE THE THIRD TIME I HAVE TESTIFIED ON INTELLIGENCE OVERSIGHT LEGISLATION. I APPEARED LAST NOVEMBER BEFORE THE SENATE INTELLIGENCE COMMITTEE TO TESTIFY ON SIMILAR LEGISLATION AND IN FEBRUARY BEFORE THE HOUSE INTELLIGENCE COMMITTEE ON H.R. 3822. IN MY TESTIMONY BEFORE THOSE COMMITTEES, I FOCUSED PRIMARILY ON WHETHER THE LEGISLATION WAS TRULY NECESSARY, AND ON THE PRACTICAL IMPACT OF THE OVERSIGHT BILL ON THE

INTELLIGENCE COMMUNITY. I INTEND TO ADDRESS BOTH POINTS IN MY TESTIMONY TODAY ON THE HOUSE BILL.

THE NEED FOR LEGISLATION

IN MY REMARKS BEFORE THE SENATE AND HOUSE INTELLIGENCE COMMITTEES I QUESTIONED THE NEED FOR THIS TYPE OF LEGISLATION. ALTHOUGH BOTH INTELLIGENCE COMMITTEES SUBSEQUENTLY DECIDED TO RECOMMEND APPROVAL OF THE LEGISLATION, I STILL BELIEVE THAT THIS LEGISLATION IS NOT A NECESSARY RESPONSE TO THE CONCERNS MEMBERS OF THE CONGRESS HAVE EXPRESSED ABOUT THE OVERSIGHT OF COVERT ACTION.

AS YOU KNOW, THE PRESIDENT RECOGNIZED LAST YEAR THAT THERE WAS ROOM FOR IMPROVEMENT IN THE WAY THE TWO BRANCHES WERE MEETING THEIR RESPONSIBILITIES. AS A RESULT, HE TOOK CONCRETE, SUBSTANTIAL STEPS TO ESTABLISH IMPROVED PROCEDURES TO ENSURE THAT CONGRESS IS GIVEN THE OPPORTUNITY TO PLAY ITS APPROPRIATE OVERSIGHT ROLE. THESE NEW PROCEDURES, IN THE FORM OF A NATIONAL SECURITY DECISION DIRECTIVE ON SPECIAL ACTIVITIES (NSDD-286), MUCH OF WHICH HAS BEEN DECLASSIFIED, CLARIFY THE RULES BY WHICH COVERT ACTIONS ARE REVIEWED, APPROVED, AND REPORTED TO CONGRESS. IN FACT, MANY OF THE PROPOSALS CONTAINED IN H.R. 3822 ARE ALREADY CONTAINED IN NSDD-286. THIS CAN BE ILLUSTRATED BY MAKING A FEW COMPARISONS BETWEEN THE BILL AND THE PRESIDENTIAL DIRECTIVE.

--THE BILL REQUIRES THAT FINDINGS BE IN WRITING, CANNOT BE

MADE RETROACTIVE, AND MUST BE CONSISTENT WITH EXISTING LAW. SIMILAR REQUIREMENTS ARE CONTAINED IN THE NSDD.

--THE BILL MAKES CLEAR THAT A PRESIDENTIAL FINDING MUST BE OBTAINED BEFORE ANY AGENCY OR DEPARTMENT CAN CONDUCT A COVERT ACTION. THE PRESIDENTIAL DIRECTIVE AFFIRMS THIS PRINCIPLE.

--THE BILL REQUIRES THAT A PRESIDENTIAL FINDING SPECIFY THE NAMES OF EACH DEPARTMENT OR AGENCY OF THE U.S. GOVERNMENT THAT IS FUNDING OR PARTICIPATING IN A SIGNIFICANT WAY IN A COVERT ACTION, AND WHETHER IT IS CONTEMPLATED THAT ANY THIRD PARTY WILL BE USED TO FUND OR OTHERWISE PARTICIPATE IN A SIGNIFICANT WAY IN THE COVERT ACTION. AGAIN, THE PRESIDENTIAL DIRECTIVE CONTAINS THE SAME REQUIREMENT.

IT IS NOT SURPRISING OR COINCIDENTAL THAT PROVISIONS OF THE BILL ARE SIMILAR TO THE PRESIDENTIAL DIRECTIVE. THE PROCEDURES THE PRESIDENT HAS INSTALLED WERE DEVELOPED FOLLOWING CLOSE AND PROLONGED CONSULTATION WITH MEMBERS AND STAFFS OF THE INTELLIGENCE COMMITTEES.

WHILE A PRESIDENTIAL DIRECTIVE IS NOT THE SAME AS LEGISLATION, I AM NOT PERSUADED THAT NEW LEGISLATION AT THIS TIME IS THE BEST WAY TO ADDRESS THE CONCERNS THAT MEMBERS HAVE WITH THE CONGRESSIONAL ROLE REGARDING SPECIAL ACTIVITIES. IN MY VIEW, A LEGISLATIVE REMEDY SHOULD BE EMPLOYED ONLY IF IT IS CLEAR THAT

THERE IS A BASIC DEFICIENCY IN THE OVERSIGHT PROCESS. THAT IS DOUBLY THE CASE WHEN THE LEGISLATIVE REMEDY PROPOSED RAISES CONSTITUTIONAL ISSUES THAT THREATEN TO DIVIDE THE TWO BRANCHES IN AN AREA WHERE EFFECTIVE WORK PLACES A PREMIUM ON COOPERATION.

THE IRAN/CONTRA MATTER, WHILE SERIOUS, HAS NOT IN MY VIEW DEMONSTRATED THAT THE SYSTEM OF CONGRESSIONAL OVERSIGHT OF THE INTELLIGENCE COMMUNITY ESTABLISHED UNDER CURRENT STATUTES IS SERIOUSLY FLAWED. MANY OF THE PROBLEMS EXPOSED WERE THE RESULT OF OFFICIALS FAILING TO FOLLOW EXISTING PROCEDURES AND RULES. AS YOU MAY BE AWARE, I HAVE TAKEN STEPS WITHIN THE CIA TO DISCIPLINE THOSE EMPLOYEES WHO FAILED TO FOLLOW CIA PROCEDURES OR WHO TESTIFIED TO CONGRESS IN A MANNER THAT WAS NOT CANDID OR COMPLETE. THOSE ACTIONS, TAKEN IN LIGHT OF THE REQUIREMENTS DEFINED BY CURRENT STATUTE, IN MY VIEW HAVE ADEQUATELY ADDRESSED THE PROBLEMS WE FOUND. SIMILARLY, TO THE EXTENT THAT THERE WERE ANY PROCEDURAL SHORTCOMINGS DEMONSTRATED BY THE IRAN/CONTRA MATTER, THEY HAVE ALREADY BEEN ADDRESSED BY THE NEW PRESIDENTIAL DIRECTIVE WITHIN THE PRESENT STATUTORY FRAMEWORK.

I WOULD LIKE TO EMPHASIZE THAT ANY LEGISLATION THAT IS ENACTED SHOULD NOT ADVERSELY AFFECT THE INTELLIGENCE COMMUNITY'S ABILITY TO DO ITS JOB. IN THIS CONNECTION, MR. CHAIRMAN, THE BILL PASSED BY THE SENATE IN MARCH AND THE BILL MARKED UP BY THE HOUSE INTELLIGENCE COMMITTEE HAVE ADDRESSED CONSTRUCTIVELY SOME OF THE IMPORTANT SUBSTANTIVE CONCERNS I AND OTHER ADMINISTRATION

OFFICIALS RAISED WITH THE ORIGINAL SENATE BILL INTRODUCED IN THAT BODY. BOTH THE HOUSE AND SENATE BILLS, FOR EXAMPLE, RECOGNIZE THE NEED TO REPORT ON SPECIAL ACTIVITIES AND INTELLIGENCE COLLECTION IN A MANNER CONSISTENT WITH DUE REGARD FOR THE PROTECTION OF SENSITIVE INTELLIGENCE SOURCES AND METHODS. I AM ALSO PLEASED THAT NEITHER BILL REQUIRES THAT THE FINDING SPECIFY THE IDENTITY OF FOREIGN COUNTRIES ASSISTING THE AGENCY IN THE CONDUCT OF COVERT ACTION. THESE IMPORTANT SAFEGUARDS WILL IN MY VIEW GO A LONG WAY IN ASSURING FRIENDLY INTELLIGENCE SERVICES AND POTENTIAL AGENTS THAT SOURCE-IDENTIFYING INFORMATION WILL NOT BE WIDELY DISSEMINATED AND POSSIBLY COMPROMISED.

I AM ALSO VERY PLEASED WITH THE CHANGES IN THE ORIGINAL HOUSE VERSION OF THE BILL MADE BY THE HOUSE INTELLIGENCE COMMITTEE IN RESPONSE TO CONCERNS I RAISED BEFORE THAT COMMITTEE. MY RESERVATIONS REGARDED THE DEFINITION OF COVERT ACTION, THE EXPENDITURE OF NON-APPROPRIATED FUNDS AND THE REPORTING OF THE TRANSFER OF DEFENSE ARTICLES OR SERVICES. IN PARTICULAR, THE NEW DEFINITION OF COVERT ACTION REMOVES MUCH OF THE AMBIGUITY OVER WHAT CONSTITUTES A COVERT ACTION AND IS IN MY VIEW A DISTINCT IMPROVEMENT OVER THE CURRENT DEFINITIONS.

PRIOR NOTICE OF SPECIAL ACTIVITIES

WHILE THE INTELLIGENCE COMMITTEES HAVE ADDRESSED SEVERAL CONCERNS PREVIOUSLY RAISED IN MY TESTIMONY BEFORE THOSE

COMMITTEES, THERE IS ONE AREA OF THE BILL THAT REMAINS PARTICULARLY TROUBLESOME. THIS AREA OF DIFFICULTY INVOLVES THE PROVISION OF THE BILL THAT REQUIRES NOTIFICATION OF A COVERT ACTION TO CONGRESS, WITHOUT EXCEPTION, WITHIN 48 HOURS AFTER THE SIGNING OF A FINDING. LAST SUMMER, THE DEPARTMENT OF JUSTICE PROVIDED THE CONGRESS WITH ITS VIEWS ON THE CONSTITUTIONALITY OF SUCH A PROVISION, SO I WILL NOT ADDRESS THAT ISSUE HERE. I HAVE TWO SEPARATE CONCERNS ABOUT THIS PROVISION.

FIRST, THE FACT THAT THERE IS A SHARP DIFFERENCE OF INTERPRETATION BETWEEN THE VIEW OF THE ADMINISTRATION AND THE POSITION EMBODIED IN THIS BILL REGARDING THIS PROVISION'S CONSTITUTIONAL VALIDITY WILL PROMOTE TENSION BETWEEN THE EXECUTIVE AND LEGISLATIVE BRANCHES FOR YEARS TO COME. IN THE INTELLIGENCE AREA SUCH TENSION HAS THE POTENTIAL TO DISRUPT THE COOPERATION AND TRUST THAT EFFECTIVE NATIONAL SECURITY POLICY REQUIRES.

SECOND, I BELIEVE THAT AS A PRACTICABLE MATTER ALLOWANCE MUST BE MADE FOR THAT RARE CASE WHERE A LIMITED DELAY IN CONGRESSIONAL NOTIFICATION IS CRITICAL TO PRESERVE THE ABSOLUTE SECURITY OF AN OPERATION WHEN, FOR EXAMPLE, LIVES ARE AT STAKE. IN SUCH A RARE CASE, THE SUCCESS OF AN OPERATION MAY DEPEND ON THE COOPERATION OF A FOREIGN GOVERNMENT THAT HAS CONDITIONED ITS SUPPORT ON THE PRESIDENT DELAYING CONGRESSIONAL NOTIFICATION UNTIL THE OPERATION IS COMPLETED. AN INFLEXIBLE NOTIFICATION REQUIREMENT COULD FORCE A PRESIDENT TO CHOOSE BETWEEN PROVIDING THE CONGRESSIONALLY

REQUIRED NOTIFICATION WITHIN 48 HOURS AND JEOPARDIZING THE LIVES OF INNOCENT AMERICANS, OR DELAYING THAT NOTIFICATION TO PROTECT THOSE LIVES. I CAN UNDERSTAND WHY ANY PRESIDENT WOULD BE RELUCTANT TO AGREE TO A LAW THAT WOULD REQUIRE SUCH CHOICES.

IT IS WORTHWHILE TO NOTE THAT CONCERNS ABOUT EXCESSIVE DELAY IN CONGRESSIONAL NOTIFICATION OF A SPECIAL ACTIVITY HAVE ALREADY BEEN ADDRESSED BY NSDD 286. THAT DIRECTIVE REQUIRES THE NATIONAL SECURITY PLANNING GROUP TO REEVALUATE AT LEAST EVERY 10 DAYS A DECISION TO DELAY CONGRESSIONAL NOTIFICATION OF A GIVEN FINDING. THIS WILL ENSURE THAT WHEN A DELAY IN NOTIFICATION IS NECESSARY, THE REASON FOR THAT DECISION WILL BE CONTINUALLY REASSESSED BY RESPONSIBLE SENIOR OFFICERS OF SEVERAL AGENCIES OR DEPARTMENTS SO THAT THE DELAY WILL BE AS SHORT AS POSSIBLE. I REPEAT, HOWEVER, THAT I CAN THINK OF FEW CIRCUMSTANCES THAT WOULD EVER NECESSITATE SUCH EXTRAORDINARY STEPS.

IF THE COMMITTEE SHOULD NEVERTHELESS DECIDE THAT LEGISLATION IS NECESSARY TO LIMIT THE PRESIDENT'S AUTHORITY TO DELAY NOTIFICATION, I WOULD URGE MEMBERS TO GIVE SERIOUS CONSIDERATION TO LANGUAGE CONTAINED IN A BILL PROPOSED BY RANKING MINORITY MEMBER BROOMFIELD THAT WOULD ALLOW THE PRESIDENT TO DELAY NOTIFICATION IF HE DETERMINES THAT AN EMERGENCY CONSTITUTING A GRAVE AND IMMEDIATE THREAT TO THE NATIONAL SECURITY OF THE UNITED STATES EXISTS. WHILE SUCH A STANDARD MAY NOT COVER ALL SITUATIONS WHERE LIVES ARE AT STAKE, IT WOULD ALLOW THE PRESIDENT THE

FLEXIBILITY TO DELAY NOTIFICATION IN CIRCUMSTANCES WHERE THE GOVERNMENT FACES A GRAVE AND IMMEDIATE THREAT TO ITS SECURITY.

ACCESS BY FOREIGN AFFAIRS COMMITTEE TO INTELLIGENCE INFORMATION

ALTHOUGH NOT DIRECTLY RELEVANT TO THE LEGISLATION BEFORE THIS COMMITTEE, I THOUGHT THIS WOULD BE AN APPROPRIATE TIME TO ADDRESS A CONCERN I UNDERSTAND SOME MEMBERS HAVE WITH RESPECT TO ACCESS BY THE FOREIGN AFFAIRS COMMITTEE TO INTELLIGENCE INFORMATION. IN MY VIEW, THE FOREIGN AFFAIRS COMMITTEE DOES ^{HAS} HAVE A LEGITIMATE NEED FOR INFORMATION ABOUT DEVELOPMENTS AROUND THE WORLD. SOME OF THIS INFORMATION IS CLASSIFIED. OUR BEST INTELLIGENCE ANALYSIS ABOUT THE SIGNIFICANCE AND IMPLICATIONS OF SUCH DEVELOPMENTS CAN PLAY AN IMPORTANT PART IN THE COMMITTEE DOING ITS WORK PROPERLY.

I BELIEVE THE RECORD WILL SHOW THAT THE CENTRAL INTELLIGENCE AGENCY HAS, IN FACT, BEEN RESPONSIVE TO THE REQUEST OF THE COMMITTEE FOR SUCH INFORMATION. SOME RECENT STATISTICS HELP TO ILLUSTRATE THIS POINT. DURING THE PERIOD FROM 1986 TO THE PRESENT, THERE HAVE BEEN 48 STAFF BRIEFINGS, 68 MEMBER BRIEFINGS, AND 14 APPEARANCES BEFORE THE COMMITTEE INVOLVING FORMAL TESTIMONY. TO THE CONGRESS AS A WHOLE, CIA NOW PROVIDES MORE THAN 1,000 BRIEFINGS PER YEAR. LISTENING TO THESE BRIEFINGS TAKES A GREAT DEAL OF VALUABLE TIME ON YOUR PART, SO I GATHER YOU FIND THEM USEFUL.

THE SUBSTANCE OF THE INFORMATION CONVEYED BY THE AGENCY TO THE CONGRESS HAS RANGED FROM PRETRIP BRIEFINGS ON PARTICULAR COUNTRIES FOR MEMBERS TO FORMAL TESTIMONY ON THE DISASTER AT CHERNOBYL OR TERRORISM IN GENERAL. IN ADDITION, THE COMMITTEE HAS ACCESS TO THE NATIONAL INTELLIGENCE DAILY, OUR NATIONAL INTELLIGENCE ESTIMATES AND A VARIETY OF OTHER INTELLIGENCE PUBLICATIONS. I WOULD URGE MEMBERS OF THIS COMMITTEE WHO ARE INTERESTED IN OBTAINING MORE INTELLIGENCE INFORMATION TO TAKE ADVANTAGE OF THE ACCESS OF THE COMMITTEE TO THIS WEALTH OF INFORMATION.

WHILE I BELIEVE WE HAVE BEEN RESPONSIVE TO THE COMMITTEE'S REQUEST FOR INTELLIGENCE INFORMATION, I HOPE THAT YOU WILL UNDERSTAND MY NEED TO PROTECT FROM DISCLOSURE OPERATIONAL INTELLIGENCE INFORMATION THAT MIGHT JEOPARDIZE OUR SOURCES AND METHODS FOR GATHERING THIS INFORMATION. WHEN THIS INFORMATION IS COMPROMISED, NOT ONLY IS THE PARTICULAR SOURCE OF INTELLIGENCE LOST TO THE U.S. GOVERNMENT, BUT OTHERS BECOME RELUCTANT TO COOPERATE FOR FEAR THEIR IDENTITIES WILL ALSO BE DISCLOSED. IN SOME CASES IT MAY BE ADVISABLE TO DISCLOSE SENSITIVE OPERATIONAL INFORMATION IN ORDER FOR CONGRESS TO CONDUCT EFFECTIVE OVERSIGHT. A DECISION WAS MADE BY CONGRESS ITSELF IN 1980 TO LIMIT THIS TYPE OF INFORMATION TO THE INTELLIGENCE COMMITTEES. THIS DECISION WAS A WISE ONE, AND I WOULD STRONGLY OPPOSE ANY PROPOSAL TO EXPAND THE NUMBER OF CONGRESSIONAL COMMITTEES DIRECTLY INVOLVED IN INTELLIGENCE OVERSIGHT.

ACCESS TO COVERT ACTION INFORMATION

IN ADDITION TO THE QUESTION OF ACCESS TO INTELLIGENCE INFORMATION IN GENERAL, I UNDERSTAND SOME MEMBERS ARE CONCERNED THAT THE THE FOREIGN AFFAIRS COMMITTEE IS NOT BEING BRIEFED ON COVERT ACTIONS THAT HAVE SIGNIFICANT FOREIGN POLICY IMPLICATIONS. UNDER EXISTING LAW AND THE INTELLIGENCE OVERSIGHT BILL BEING CONSIDERED BY THIS COMMITTEE, ACCESS TO COVERT ACTION INFORMATION IS CONFINED TO THE INTELLIGENCE OVERSIGHT COMMITTEES AND THE DEFENSE SUBCOMMITTEES OF THE APPROPRIATIONS COMMITTEES. I DO NOT BELIEVE IT IS NECESSARY OR WISE TO EXPAND THE NUMBER OF COMMITTEES TO WHICH WE MUST REPORT COVERT ACTIONS. TO DO SO WOULD SIMPLY RETURN US TO THE SITUATION EXISTING BEFORE THE INTELLIGENCE OVERSIGHT ACT OF 1980 WHEN WE HAD TO PROVIDE COVERT ACTION INFORMATION TO EIGHT COMMITTEES OF CONGRESS. THIS SITUATION MADE IT ALMOST IMPOSSIBLE TO CONDUCT COVERT ACTION COVERTLY.

I BELIEVE THAT THE CONCERN EXPRESSED BY SOME REGARDING THE LACK OF COMMITTEE ACCESS TO COVERT ACTION INFORMATION MAY BE THE RESULT OF A MISPERCEPTION AS TO HOW COVERT ACTION RELATES TO OUR FOREIGN POLICY. COVERT ACTION IS IMPLEMENTATION BY CLANDESTINE MEANS OF THE FOREIGN POLICY OF THE UNITED STATES GOVERNMENT. OUR FOREIGN POLICY IS FORMULATED BY THE PRESIDENT AND THE SECRETARY OF STATE.

THE DIRECTOR OF CENTRAL INTELLIGENCE SHOULD NOT MAKE FOREIGN POLICY OR USE COVERT ACTION AS A VEHICLE FOR CREATING A SECRET FOREIGN POLICY. BECAUSE THE SECRETARY OF STATE IS OBLIGATED TO KEEP THE FOREIGN AFFAIRS COMMITTEE INFORMED OF OUR FOREIGN POLICY, I BELIEVE THAT THE COMMITTEE DOES HAVE THE NECESSARY MEANS TO MAKE ITS VIEWS KNOWN REGARDING FOREIGN POLICY, INCLUDING THOSE SPECIFIC POLICIES BEING IMPLEMENTED BY A COVERT ACTION.

IF YOU BELIEVE THAT THE ARRANGEMENT I HAVE DESCRIBED IS NOT ADEQUATE TO ENSURE THAT THE VIEWS OF THE FOREIGN AFFAIRS COMMITTEE ARE REPRESENTED IN THE OVERSIGHT OF COVERT ACTION, I WOULD SUGGEST CONGRESS CONSIDER GREATER USE OF CROSS-OVER MEMBERSHIP BETWEEN THE FOREIGN AFFAIRS COMMITTEE AND THE HOUSE INTELLIGENCE COMMITTEE. SUCH CROSS-OVER MEMBERS ARE IN THE BEST POSSIBLE POSITION TO EXPRESS THE VIEWS OF THE FOREIGN AFFAIRS COMMITTEE IN DELIBERATIONS CONDUCTED BY THE HOUSE INTELLIGENCE COMMITTEE. SOME OF YOU NOW SERVE OR HAVE IN THE PAST SERVED VERY EFFECTIVELY IN THIS WAY.

IN CLOSING, I WOULD LIKE TO REEMPHASIZE TO EACH OF YOU MY PERSONAL COMMITMENT TO MAKING THE OVERSIGHT PROCESS WORK. IT HAS ALWAYS BEEN CLEAR, AND RECENT EXPERIENCE HAS AGAIN DEMONSTRATED, THAT THE IMPLEMENTATION OF THE FOREIGN POLICY OF OUR GOVERNMENT, INCLUDING COVERT ACTION, CAN ONLY BE SUCCESSFUL WHEN THE EXECUTIVE AND LEGISLATIVE BRANCHES OF GOVERNMENT WORK TOGETHER IN AN ATMOSPHERE OF MUTUAL RESPECT AND TRUST. THIS SPIRIT OF COOPERATION CAN ONLY OCCUR IF THE CONGRESS RECEIVES THE

APPROPRIATE INFORMATION NEEDED TO REVIEW AND MAKE INFORMED JUDGMENTS ON COVERT ACTION, WHILE AT THE SAME TIME ENSURING THAT THIS INFORMATION IS PROTECTED FROM UNAUTHORIZED DISCLOSURE. THE LAW SHOULD REFLECT NOT ONLY THE NEED FOR COOPERATION, BUT ALSO THE PRESIDENT'S RESPONSIBILITY FOR THE CONDUCT AND MANAGEMENT OF OUR INTELLIGENCE AND THE IMPORTANCE TO THE NATION OF ENSURING THAT THE PRESIDENT HAS THE NECESSARY FLEXIBILITY AND AUTHORITY TO EMPLOY OUR INTELLIGENCE CAPABILITY EFFECTIVELY.

AS I HAVE NOTED, THE PRESIDENT HAS TAKEN CORRECTIVE STEPS TO IMPROVE THE OVERSIGHT SYSTEM THROUGH A PRESIDENTIAL DIRECTIVE. AT CIA, I HAVE APPROVED A NUMBER OF MEASURES THAT WILL PREVENT A REPETITION OF THE SHORTCOMINGS IN THE AGENCY'S PERFORMANCE IN THE IRAN/CONTRA MATTER. IN SHORT, SIGNIFICANT CHANGES HAVE BEEN MADE. I WOULD RESPECTFULLY SUBMIT THAT THEY SHOULD BE GIVEN A CHANCE TO WORK. INDEED, THEY ARE WORKING. I AM CONVINCED THAT THE CURRENT FRAMEWORK, AND NOT NEW LAWS, REPRESENTS THE MOST APPROPRIATE AND EFFECTIVE MEANS TO ACHIEVE OUR SHARED COMMITMENT TO HAVE CONGRESS PLAY AN ACTIVE, EFFECTIVE ROLE IN THE OVERSIGHT OF UNITED STATES INTELLIGENCE ACTIVITIES.

THIS CONCLUDES MY STATEMENT. I AM PREPARED TO ANSWER YOUR QUESTIONS.

Page Denied

Next 30 Page(s) In Document Denied

D

as reported by the House Permanent Select Committee on Intelligence

STRIKE ALL AFTER THE ENACTING CLAUSE AND INSERT IN LIEU THEREOF:

SEC. 1. This Act may be cited as the "Intelligence Oversight Act of 1988".

SEC. 2. Section 662 of the Foreign Assistance Act of 1961 (22 U.S.C. 2422) is hereby repealed.

SEC. 3. Section 501 of title V of the National Security Act of 1947 (50 U.S.C. 413) is amended by striking the language contained therein, and substituting the following new sections:

"GENERAL PROVISIONS

"SEC. 501. (a) The President shall ensure that the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives (hereinafter in this title referred to as the 'intelligence committees') are kept fully and currently informed of the intelligence activities of the United States, including any significant anticipated intelligence activities, as required by this title: Provided, That nothing contained in this title shall be construed as requiring the approval of the intelligence committees as a condition precedent to the initiation of such activities.

-2-

"(b) The President shall ensure that any illegal intelligence activity is reported promptly to the intelligence committees, as well as any corrective action that has been taken or is planned in connection with such illegal activity.

"(c) The President and the intelligence committees shall establish such procedures as may be necessary to carry out the provisions of this title.

"(d) The House of Representatives and the Senate, in consultation with the Director of Central Intelligence, shall each establish, by rule or resolution of such House, procedures to protect from unauthorized disclosure all classified information and all information relating to intelligence sources and methods furnished to the intelligence committees or to Members of Congress under this title. In accordance with such procedures, each of the intelligence committees shall promptly call to the attention of its respective House, or to any appropriate committee or committees of its respective House, any matter relating to intelligence activities requiring the attention of such House or such committee or committees.

"(e) Nothing in this Act shall be construed as authority to withhold information from the intelligence committees on the grounds that providing the information to the intelligence committees would constitute the unauthorized disclosure of classified information or information relating to intelligence sources and methods.

-3-

"(f) As used in this section, the term 'intelligence activities' includes, but is not limited to, 'covert action' as defined in section 503(e).

"REPORTING INTELLIGENCE ACTIVITIES OTHER THAN COVERT ACTION

"SEC. 502. To the extent consistent with due regard for the protection from unauthorized disclosure of classified information relating to sensitive intelligence sources and methods or other exceptionally sensitive matters, the Director of Central Intelligence and the heads of all departments, agencies, and other entities of the United States Government involved in intelligence activities shall (1) keep the intelligence committees fully and currently informed of all intelligence activities, other than a covert action as defined in section 503(e), which are the responsibility of, are engaged in by, or are carried out for or on behalf of, any department, agency, or entity of the United States Government, including any significant anticipated intelligence activity and any significant intelligence failure; and (2) furnish the intelligence committees any information or material concerning intelligence activities, other than covert actions, which is within their custody or control, and which is requested by either of the intelligence committees in order to carry out its authorized responsibilities.

"PRESIDENTIAL APPROVAL AND REPORTING OF COVERT ACTIONS

"SEC. 503. (a) The President may not authorize the conduct of a covert action by departments, agencies, or entities of the United States Government

-4-

unless he determines such an action is necessary to support identifiable foreign policy objectives of the United States and is important to the national security of the United States, which determination shall be set forth in a finding that shall meet each of the following conditions:

"(1) Each finding shall be in writing, unless immediate action by the United States is required and time does not permit the preparation of a written finding, in which case a written record of the President's decision shall be contemporaneously made and shall be reduced to a written finding as soon as possible but in no event more than forty-eight hours after the decision is made.

"(2) Except as permitted by paragraph (1), a finding may not authorize or sanction covert actions, or any aspect of such actions, which have already occurred.

"(3) Each finding shall specify each and every department, agency, or entity of the United States Government authorized to fund or otherwise participate in any significant way in such actions: Provided, That any employee, contractor, or contract agent of a department, agency, or entity of the United States Government other than the Central Intelligence Agency directed to participate in any way in a covert action shall be subject either to the policies and regulations of the Central Intelligence Agency, or to written policies or regulations adopted by such department, agency or entity, to govern such participation.

-5-

"(4) Each finding shall specify whether it is contemplated that any third party which is not an element of, or a contractor or contract agent of, the United States Government, or is not otherwise subject to United States Government policies and regulations, will be used to fund or otherwise participate in any significant way in the covert action concerned, or be used to undertake the covert action concerned on behalf of the United States.

"(5) A finding may not authorize any action that would violate any statute of the United States.

"(b) To the extent consistent with due regard for the protection from unauthorized disclosure of classified information relating to sensitive intelligence sources and methods or other exceptionally sensitive matters, the Director of Central Intelligence and the heads of all departments, agencies, and entities of the United States Government involved in a covert action shall keep the intelligence committees fully and currently informed of all covert actions which are the responsibility of, are engaged in by, or are carried out for or on behalf of, any department, agency or entity of the United States Government, and shall furnish to the intelligence committees any information or material concerning covert actions which is in the possession, custody or control of any department, agency, or entity of the United States Government and which is requested by either of the intelligence committees in order to carry out its authorized responsibilities.

-6-

"(c)(1) The President shall ensure that any finding approved pursuant to subsection (a) shall be reported to the intelligence committees as soon as possible after such approval and prior to the initiation of the covert action authorized by the finding: Provided, That if the President determines it is essential to limit access to the finding to meet extraordinary circumstances affecting vital interests of the United States, such finding may be reported to the chairmen and ranking minority members of the intelligence committees, the Speaker and minority leader of the House of Representatives, and the majority and minority leaders of the Senate. In either case, a copy of the finding, signed by the President, shall be provided to the chairman of each intelligence committee. Where access to a finding is limited to the Members of Congress identified above, a statement of the reasons for limiting such access shall also be provided.

"(2) In circumstances where time is of the essence and the President determines that it is important to the national security interests of the United States to initiate a covert action before the notice required by paragraph (1) can be given, such action may be initiated without such notice.

"(3) The President shall ensure that notice of a covert action undertaken pursuant to paragraph (2) is provided to the intelligence committees, or to the Members of Congress identified in paragraph (1), as soon as possible, but in no event later than forty-eight hours after the covert action has been authorized pursuant to subsection (a). Such notice shall be accompanied by a statement of the President setting forth why time was of the essence and why proceeding pursuant to paragraph (2) is important to the national security interests of the United States.

-7-

"(d) The President shall ensure that the intelligence committees, or, if applicable, the Members of Congress specified in subsection (c)(1), are notified of any significant change in a previously-approved covert action, or any significant undertaking pursuant to a previously approved finding, in the same manner as findings are reported pursuant to subsection (c).

"(e) As used in this title, the term 'covert action' means an activity or activities conducted by an element of the United States Government to influence political, economic, or military conditions abroad so that the role of the United States Government is not intended to be apparent or acknowledged publicly, but does not include--

"(1) activities the primary purpose of which is to acquire intelligence, traditional counterintelligence activities, traditional activities to improve or maintain the operational security of United States Government programs, or administrative activities;

"(2) traditional diplomatic or military activities or routine support to such activities;

"(3) traditional law enforcement activities conducted by United States Government law enforcement agencies or routine support to such activities; or

-8-

"(4) activities to provide routine support to the overt activities (other than activities described in paragraphs (1), (2), or (3)) of other United States Government agencies abroad.

A request by any department, agency, or entity of the United States to a foreign government or a private citizen to conduct a covert action on behalf of the United States shall be deemed to be a covert action.

"(f) No covert action may be conducted if it is intended to influence United States political processes, public opinion, policies, or media."

SEC. 4. Section 502 of title V of the National Security Act of 1947 (50 U.S.C. 414) is redesignated as section 504 of such Act, and is amended by deleting "501" in subsection (a)(2) of such section and inserting in lieu thereof "503" and by adding at the end the following:

"(d) No funds appropriated for, or otherwise available to, any department, agency, or entity of the United States Government, may be expended, or may be directed to be expended, for any covert action, as defined in section 503(e), unless and until a Presidential finding required by section 503(a) has been signed or otherwise issued in accordance with that subsection.

"(e) Except as provided in section 204(b) (appearing under the heading 'General Provisions--Department of Justice') of the Department of Justice Appropriations Act, 1988 (contained in P.L. 100-202) and in Section 423 of

-9-

○ Title 10, United States Code, funds available to an intelligence agency which are not appropriated funds may be obligated or expended for an intelligence or intelligence-related activity only if they are used for activities reported to the appropriate congressional committees pursuant to procedures jointly agreed upon by such committees, the Director of Central Intelligence or the Secretary of Defense, which identify types of activities for which nonappropriated funds may be expended and under what circumstances an activity must be reported as a significant anticipated intelligence activity before such funds can be expended."

SEC. 5. Section 503 of title V of the National Security Act of 1947 (50 U.S.C. 415) is redesignated as section 505 of such Act, and subsection (a)(1) of such section is amended by adding, ", or the anticipated transfer in any fiscal year of any aggregation of defense articles or defense services," after "service".

○

E

100TH CONGRESS
1ST SESSION

H. R. 3611

To provide for executive branch notification to the legislative branch of sensitive foreign intelligence activities in a manner consistent with the constitutional authorities and duties of both branches, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 5, 1987

Mr. BROOMFIELD introduced the following bill; which was referred to the Committee on the Permanent Select Committee on Intelligence

A BILL

To provide for executive branch notification to the legislative branch of sensitive foreign intelligence activities in a manner consistent with the constitutional authorities and duties of both branches, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Foreign Intelligence
4 Congressional Notification Act".

5 SEC. 2. (a) Paragraph 501(a)(1) of the National Security
6 Act of 1947 (50 U.S.C. 413 (a)(1)) is amended by—
7 (1) striking "(A)";

1 (2) inserting a semicolon after "any such signifi-
2 cant anticipated intelligence activity"; and

3 (3) striking the remainder of the paragraph.

4 (b) Section 501 of the National Security Act of 1947 is
5 amended by adding at the end thereof the following new sub-
6 section:

7 "(f)(1) No funds appropriated or otherwise available to
8 any department, agency, or entity of the United States may
9 be obligated or expended for any intelligence activity, includ-
10 ing any significant anticipated intelligence activity, unless the
11 Director of Central Intelligence or the head of the depart-
12 ment, agency or entity—

13 "(A) has notified the intelligence committees of
14 such activity; or

15 "(B) has notified the Speaker and minority leader
16 of the House of Representatives and the majority
17 leader and the minority leader of the Senate of such
18 activity, if the President has determined in writing that
19 it is essential to limit the number of persons given
20 prior notice of the activity to meet extraordinary cir-
21 cumstances affecting vital interests of the United
22 States.

23 "(2) The President may waive in writing the applicabil-
24 ity of paragraph (1) with respect to a particular intelligence
25 activity, including a particular significant anticipated intelli-

1 gence activity, if he determines in writing that an emergency
2 constituting a grave and immediate threat to the national se-
3 curity of the United States requires such a waiver.

4 “(3) This subsection shall not apply with respect to an
5 intelligence activity, including a significant anticipated intelli-
6 gence activity, for which funds were specifically authorized
7 by the Congress (as defined in Section 502(c)(3)).”.

○

UNCLASSIFIED

I. INTRODUCTION

A. The Policy Context

In discharging his constitutional responsibility for the conduct of foreign relations and for ensuring the security of the United States, the President may find it necessary that activities conducted in support of national foreign policy objectives abroad be planned and executed so that the role of the United States Government is not apparent or acknowledged publicly. Such activities, the failure or exposure of which may entail high costs, must be conducted only after the President reaches an informed judgment regarding their utility in particular circumstances. To the extent possible, they should be conducted only when we are confident that, if they are revealed, the American public would find them sensible.

This Directive... sets forth revised procedures for presidential approval and review, through the National Security Council (NSC) process, of all "special activities" as defined by section 3.4(h) of Executive Order No. 12333 (December 4, 1981).

These procedures are designed, inter alia, (1) to ensure that all special activities conducted by, or at the direction of, the United States are consistent with national defense and foreign policies and applicable law; (2) to provide standards ensuring the secrecy of such activities even when the results become publicly known or the activities themselves are the subject of unauthorized disclosure; and (3) to implement section 501 of the National Security Act of 1947, as amended (50 U.S.C. 413), concerning notification to Congress of such activities.

B. The Role of the Assistant to the President for National Security Affairs and the National Security Council Staff

Within the framework and in accordance with the requirements set forth in NSDD 266, the Assistant to the President for National Security Affairs (the "National Security Advisor") shall serve as manager of the NSC process and as principal advisor on the President's staff with respect to all national security affairs, including special activities. The NSC staff, through the Executive Secretary of the NSC, shall assist the National Security Advisor in discharging these responsibilities. The National Security Advisor and the NSC staff themselves shall not undertake the conduct of special activities.

Early Declassified/Released on 12/15/87
under provisions of E.O. 12356
by D. Sirko, National Security Council

Extract from
NSDD 286

UNCLASSIFIED

II. APPROVAL AND REVIEW OF SPECIAL ACTIVITIES

A. Presidential Findings and Memoranda of Notification

1. Presidential Findings

In all cases, special activities of the Central Intelligence Agency (CIA) in foreign countries require, under the terms of section 662 of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2422), Findings by the President that such activities are important to the national security of the United States. Presidential Findings shall be obtained with respect to all CIA activities abroad, other than those activities that are intended solely for obtaining necessary intelligence within the meaning of section 662 of the Foreign Assistance Act of 1961, as amended.

No special activity may be conducted except under the authority of, and subsequent to, a Finding by the President that such activity is important to the national security of the United States. In all but the rarest of circumstances, no special activity may be undertaken prior to the President's having signed a written Finding. In cases in which the President determines that time is of the essence and that the national security requires that a special activity be undertaken before a written Finding can be presented for signature, and that oral authorization therefore is required, ...a contemporaneous record of the President's authorization shall be made in writing, and... a corresponding Finding shall be submitted for signature by the President as soon as possible, but in no event more than two working days thereafter. No Finding may retroactively authorize or sanction a special activity.

2. Memoranda of Notification

In the event of any proposal to change substantially the means of implementation of, or the level of resources, assets, or activity under, a Finding; or in the event of any significant change in the operational conditions, country or countries significantly engaged, or risks associated with a special activity, a written Memorandum of Notification (MON) shall be submitted to the President for his approval. All actions to be authorized by means of an MON must be important to U.S. national security as set forth in a previously-approved Finding. An MON also shall be submitted to the President for his approval in order to modify a Finding in light of changed circumstances or passage of time; or to cancel a Finding because the special activity authorized has been completed or for any other reason.

The procedures for approval by the President of an MON shall be the same as those established by this Directive for approval of a Finding.

UNCLASSIFIED

3. Contents and Accompanying Documents

Each Finding and MON submitted to the President for approval shall be accompanied by or include a statement setting forth, inter alia, the following:

- (a) the policy objectives the special activity is intended to serve and the goals to be achieved thereby;
- (b) the actions authorized, resources required, and Executive departments, agencies, and entities authorized to fund or otherwise participate significantly in the conduct of such special activity;
- (c) consistent with the protection of intelligence sources and methods, whether it is anticipated that private individuals or organizations will be instrumental in the conduct of the special activity;
- (d) consistent with the protection of intelligence sources and methods, whether it is anticipated that a foreign government or element thereof will participate significantly in the special activity; and
- (e) an assessment of the risks associated with the activity.

B. NSC Review of Proposals for Special Activities

Prior to its submission to the President, each proposed Finding and MON shall be reviewed within the NSC process as provided below. The results of such review shall be submitted to the President prior to his determination with regard to each proposed Finding or MON.

1. The National Security Planning Group

Each proposed Finding and MON shall be reviewed by the National Security Planning Group (NSPG), a committee of the NSC... The National Security Advisor shall be responsible for the agenda and conduct of such meetings, at the President's direction. Unless exceptional circumstances dictate otherwise, the National Security Advisor shall circulate the agenda for, and papers to be considered at, NSPG meetings four (4) days in advance thereof.

NSPG members shall review each proposed Finding and MON; their comments, recommendations, and dissents, if any, shall be provided to the President orally, or in writing through the National Security Advisor. The National Security Advisor shall transmit all proposed Findings and MONs to the President through the Chief of Staff to the President. Each proposed Finding and MON shall be coordinated, in advance of its submission to the President, by the NSC Legal Advisor with the Counsel to the President. Under normal circumstances, the NSPG will meet to review each Finding or MON prior to presidential approval.

UNCLASSIFIED

The President may, however, approve a Finding or MON on the basis of the NSPG members' comments communicated other than in a formal NSPG meeting. The National Security Advisor shall ensure that an appropriate record is made of the President's consultations with NSPG members however conducted, and that the President's decision is committed to writing. The National Security Advisor shall notify all NSPG members in writing of the President's decision with regard to each proposed Finding and MON...

C. Periodic NSC Review of Special Activities

Not less often than once each calendar year, the NSPG shall review each special activity, and recommend to the President those Findings to be reaffirmed, revised, or terminated. Unless, within thirty (30) days following the conclusion of such review, the President approves in writing the continuation of a Finding, or otherwise directs, such Finding and associated MONs, if any, together with the authority to undertake special activities thereunder, shall be deemed cancelled upon appropriate notice to the DCI or head of such other Executive department, agency, or entity authorized to conduct the special activity. The National Security Advisor shall provide a written report of the results of this review to NSPG members. The Director of the Office of Management and Budget shall ensure that the President's budget provides resources consistent with all Findings for the congressional budget request.

D. Executive Secretary of the NSC

The Executive Secretary of the NSC and the NSC staff shall assist the National Security Advisor and Deputy National Security Advisor with appropriate preparations for, and follow-up to, all... meetings relating to special activities. Such assistance shall include preparation of meeting minutes and the development and dissemination of decision and other documents. The Executive Secretary of the NSC shall have custody of record copies of Findings and MONs as approved by the President. The DCI, other members of the NSPG and the head of such other Executive department, agency or entity the President may direct to undertake a special activity, shall be provided with a copy of each Finding and MON as signed by the President, together with the National Security Advisor's memorandum recording the President's decision.

E. Conduct of Special Activities

Absent a specific presidential decision, as provided in section 1.8(e) of Executive Order 12333, that another Executive department, agency or entity is more likely to achieve a particular objective, no department, agency or entity other than the CIA shall be responsible as lead agency for the conduct of a special activity. Private individuals and organizations used in the conduct of special activities shall be subject to observation and supervision, as appropriate in the interests of proper

UNCLASSIFIED

operation, security and control, in accordance with procedures established for such purpose by the CIA, or other Executive department, agency, or entity.

F. Restricted Consideration

1. Security

The National Security Advisor shall establish a separate, specially compartmented control and access system at the Top Secret classification level for all policy matters concerning special activities...

G. Congressional Notification

1. The Requirement to Notify Congress

Consistent with section 501 of the National Security Act of 1947, as amended (50 U.S.C. 413), and unless the President otherwise directs in writing pursuant to his constitutional authorities and duties, Congress shall be notified on the President's behalf of all special activities in accordance with this Directive.

2. Contents of Notification

In all cases, notification to Congress as provided herein shall include a copy of the Finding or associated MON, if any, as signed by the President, and the statement described in section II.A.3 hereof.

3. Prior Notification

Consistent with the expectation of prior notification to Congress, in all but extraordinary circumstances as specified herein, the DCI, or head of such other Executive department, agency, or entity authorized to conduct a special activity, shall notify Congress, on the President's behalf, through the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives (hereinafter collectively referred to as the "Intelligence Committees"), prior to initiation of each special activity authorized by a Finding and associated MON, if any. In extraordinary circumstances affecting the vital interests of the United States, the DCI, or head of such other Executive department, agency, or entity authorized to conduct a special activity, shall notify Congress, on the President's behalf, through the Majority and Minority Leaders of the Senate, the Speaker and Minority Leader of the House of Representatives, and the Chairman and Vice Chairman of the Senate Select Committee on Intelligence, and the Chairman and Ranking Minority Member of the Permanent Select Committee on Intelligence of the House of Representatives, prior to initiation of a special activity authorized by a Finding and associated MON, if any.

UNCLASSIFIED

...y Circumstances

If the President determines that it is necessary, in order to meet rare, extraordinary circumstances, to delay notification until after the initiation of a special activity, the DCI, or head of such other Executive department, agency, or entity authorized to conduct a special activity, shall delay notification consistent with section 501(b) at the direction of the President. Unless the President otherwise directs, not later than two working days after the President signs a Finding or associated MON, if any, the Intelligence Committees shall be notified in accordance with established procedures. In all such cases, notification shall include the reasons for not giving prior notice to the Intelligence Committees. In the event the President directs that notification to Congress be delayed beyond two working days after presidential authorization of a special activity as provided herein, the grounds for such delay shall be memorialized in writing and shall be re-evaluated by the NSPG not less frequently than every ten (10) days.

III. SPECIAL ACTIVITIES NOT CONDUCTED BY THE CIA

If, as provided in section 1.8(e) of Executive Order No. 12333, the President directs that an Executive department, agency or entity other than the CIA conduct a special activity, the provisions of this Directive shall apply to such department, agency, or entity. In such cases, the head of such other Executive department, agency or entity shall fully and currently inform the DCI of all aspects of the special activity, and jointly with the DCI shall notify Congress of the special activity, in accordance with the DCI's role as the President's principal advisor on intelligence matters as set forth in NSDD 266.

UNCLASSIFIED

Page Denied

Next 5 Page(s) In Document Denied